

Decision 05-01-034

January 13, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Raw Bandwidth Communications, Inc.,

Complainant,

SBC California, Inc. (U 1001 C) and  
SBC Advanced Solutions, Inc.,  
(U 6346),

Defendants.

Case 03-05-023  
(Filed May 15, 2003)

**ORDER GRANTING LIMITED REHEARING TO MODIFY DECISION**  
**(D.) 04-05-006 TO CORRECT LEGAL ERROR AND DENYING**  
**REHEARING OF DECISION, AS MODIFIED**

**I. SUMMARY**

In D.04-05-006 (the Decision), the Commission denied Raw Bandwidth's complaint against Pacific Bell Telephone Company (dba SBC California, Inc.), and SBC Advanced Solutions, Inc. (SBC ASI)(Defendants, jointly). We ruled that the Defendants did not unreasonably discriminate against Raw Bandwidth or otherwise violate applicable law by connecting the customers of SBC Information Services (SBCIS), Defendants' affiliate, who dial 611 for digital subscriber line repair services to SBCIS, while telling customers of unaffiliated Internet Service Providers (ISP) to hang up and call their ISP. Upon further review, we hold that SBC California's differential treatment of customers who call 611 for repair

service due to questions or difficulty with DSL service is unreasonable discrimination.

## **II. FACTS/BACKGROUND**

This proceeding was initiated on May 15, 2003 when Complainant filed a complaint against Defendants for discrimination in the provision of DSL transport with respect to independent Internet Service Providers (ISPs), failure to furnish sufficient information for informed consumer choice, and failure to furnish just and reasonable telephone service and DSL transport service. Defendants are SBC California, an incumbent local exchange carrier (ILEC) which provides voice service, and SBC ASI, which provides DSL transport. Also involved, though not a named defendant, is SBCIS, which is a retail provider of Internet access. On June 30, 2003, Defendants filed a motion to dismiss the complaint. Raw Bandwidth opposed the motion. On July 8, 2003, Complainant filed a request for withdrawal of issues concerning listing ISPs on the SBC.com web page.

On August 23, 2003, a prehearing conference was held to establish the scope of the proceeding and to set a hearing schedule. On September 11, 2003, the Assigned Commissioner Ruling (ACR) and Scoping Memo granted the request, unopposed, of Raw Bandwidth to withdraw two counts of the complaint. The ACR also partially granted the Defendants' motion to dismiss that portion of Raw Bandwidth's complaint, which alleged that the Defendants unreasonably disconnected DSL Transport whenever Defendants disconnected a customer's voice line service for nonpayment. The ACR noted that advance notice of disconnection, as requested by Raw Bandwidth, raised privacy concerns. Therefore, Raw Bandwidth was granted leave to amend the complaint to request relief that would not implicate the privacy concerns.

On September 22, 2003, Raw Bandwidth filed its First Amended Complaint. Defendants filed a Joint Motion to Dismiss and to strike portions of the Amended Complaint on October 23, 2003. Administrative Law Judge (ALJ) Ruling of December 22, 2003 granted the Defendants' motion to dismiss portions

of the Amended Complaint, namely Count 6 of the Third Cause of Action and Request for Relief No. 8.

The Commission issued D.04-05-006 (the Decision) on May 10, 2004, denying Raw Bandwidth's complaint. Raw Bandwidth filed its application for rehearing on June 9, 2004. The grounds for rehearing are as follows: 1) the Decision's Findings of Fact and Conclusions of Law do not justify the order, in violation of Public Utilities (PU) Code §1705; 2) in affirming the ALJ ruling of 12/22/03, the Decision misused the summary judgment standard and affirmed the erroneous interpretation of the CISP case settlement; 3) the Decision mischaracterizes the basis on the complaint on the 611 repair service issue; 4) the Federal Communications Commission's (FCC's) Computer Inquiries proceedings and its N11 Order forbids discrimination in favor of SBC's affiliated ISP; 5) general state and federal non-discrimination statutes, such as PU Code §453 and 47 USC §202, forbid discriminating in favor of SBC's affiliated ISP; 6) the manner in which SBC California's Interactive Voice Response System (IVR) transfers calls to SBCIS causes competitive problems; and 7) the Decision violated Raw Bandwidth's due process rights by dismissing counts in the first amended complaint. Complainant also requested oral argument under the Commission's Rules of Practice and Procedure 86.3.

On June 24, 2004, the Defendants filed a joint response to Raw Bandwidth's rehearing application urging its rejection because the grounds alleged have already been considered and rejected. Defendants argue that the Decision: 1) complies with PU Code §1705; 2) did not disregard the summary judgment standard; 3) its conclusion regarding the list of errors alleged by Complainant relating to 611 service is consistent with the rules and regulations promulgated by the FCC; 4) does not misread the history of the complaint case; and 5) does not summarily dismiss counts in the first amended complaint that were not settled or otherwise voluntarily dismissed by the parties. Defendants further urge that Complainant's request for oral argument be denied.

### **III. DISCUSSION**

Raw Bandwidth's 40-page rehearing application is replete with overlapping issues that have been previously examined and rejected in these proceedings. This rehearing decision will not revisit all of them here. The parties were able to resolve several matters among themselves, leaving two issues to be considered in the Decision: 1) the ALJ dismissal of portions of the First Amended Complaint; and 2) the 611 issue involving alleged discrimination. We affirm the Decision's dismissal of portions of the First Amended Complaint; however, we grant relief on the discrimination issue.

#### **A. First Amended Complaint**

##### **1. ALJ Dismissal of Portions of the First Amended Complaint**

Raw Bandwidth charges that the Decision erred in confirming the ALJ Ruling of December 22, 2003, which granted the Defendants' Motion to Dismiss Cause of Action 3, Count 6 of the First Amended Complaint by using the summary judgment standard. Count 6 deals with Raw Bandwidth's request that it receive advance notice when underlying voice service is about to be disconnected. Complainant asserts that the ALJ should have denied the Motion to Dismiss because Defendants submitted no admissible evidence, and there was nothing in the evidentiary record in their favor.

Raw Bandwidth's challenge of the ALJ Ruling is without merit. The Commission is well aware of what the summary judgment standard is and so acknowledged it in the Decision. However, as Raw Bandwidth concedes, the Commission is not bound by the rules of evidence.<sup>1</sup> The ALJ Ruling determined that Raw Bandwidth's proposal to allow subscribers to waive privacy concerns so that Raw Bandwidth could receive advance notice of disconnection would violate

---

<sup>1</sup> Rule 64 of the Commission's Rules of Practice and Procedure provides as follows: "Although technical rules of evidence ordinarily need not be applied in hearings before the Commission, substantial rights of the parties shall be preserved."

the settlement agreement the Commission approved in D.03-07-032. The settlement agreement precludes SBC California, when acting on behalf of its affiliated ISP, from being able to identify which unaffiliated ISP is the provider. Therefore, the ALJ, for good cause, dismissed that portion of the complaint. The Decision, in considering Raw Bandwidth's Motion for Reconsideration of December 22, 2003 ALJ Ruling, affirmed the ruling's conclusion that SBC ASI need not provide DSL Transport if SBC California disconnects the underlying voice service and further determined that SBC ASI's notice practice does not violate its general services agreement.

The Decision explained why advance warnings to the ISP, as proposed by Raw Bandwidth, would be problematic and inconsistent with SBC ASI's notice practice as set forth in its general services agreement. (Decision, *mimeo*, pp. 6-7.) The Commission also noted that the ISP, as a third party who has an interest in the disconnection of service, is not entitled to the same advance notice given to the subscriber. However, public policy considerations favor giving the ISP reasonable notice pending the disconnection of the DSL Transport service. Therefore, the Commission ordered the parties to negotiate the terms and conditions of service, including those relating to notice to the ISP. (See Decision, Ordering Paragraph No. 2.)

The failure to warn Raw Bandwidth prior to disconnecting DSL Transport is not unreasonable. The practice followed by the Defendants is to notify the ISP, five days after the dial tone has been suspended for nonpayment of basic service charges, that DSL Transport is being disconnected and the line is disconnected. This procedure is followed whether it involves Defendants' affiliated ISP or an unaffiliated ISP. Raw Bandwidth asserts that a 30-day written notice must be given before DSL Transport can be disconnected. Raw Bandwidth is mistaken. As noted in the Decision, Raw Bandwidth has confused the 30-day notice requirement that applies to the notice SBC ASI must give if its DSL Transport customer (the ISP) does not comply with the agreement. It does not apply to the

disconnection of SBC California subscribers for nonpayment of their underlying voice service charges and the ensuing disconnection of DSL service. (Decision, *mimeo*, pp. 6-7.) Therefore, the Decision correctly rejected Raw Bandwidth's argument that the failure to warn it prior to disconnecting DSL Transport is unreasonable.

## **2. Disconnect Procedure**

Raw Bandwidth asserts that the Defendants' disconnect procedure is not just and reasonable under PU Code §451 and §2896(c).<sup>2</sup> The current practice requires that in order for SBC ASI to provide DSL Transport to Raw Bandwidth, SBC California must provide voice telephone service on that line. When SBC California's voice customer does not pay the telephone bill, SBC California sends a warning notice, terminates voice service if the bill is not paid, and leaves DSL Transport connected for five days. If the customer does not pay the voice bill, DSL Transport is disconnected.

The ALJ ruling of December 22, 2003 concluded that SBC ASI need not provide DSL Transport if SBC California disconnects the underlying voice service. Under SBC ASI's general services agreement, which provides that DSL Transport is offered by means of a line sharing arrangement, the line cannot be shared and DSL Transport can no longer be offered once the voice line is disconnected. (SBC ASI's General Terms & Conditions, §6.2.2)

## **3. 1705 Issue**

Raw Bandwidth alleges that the Decision does not comply with PU Code §1705 because it does not explain how the Commission resolved the following issues: 1) why the CISPA settlement would be violated if SBC California gave an advance warning to an independent ISP that its DSL Transport Service on a line

---

<sup>2</sup> PU Code §451 requires all charges demanded or received by any public utility to be just and reasonable. Section 2896(c) provides that the Commission shall require telephone corporations to provide customer service to telecommunication customers that includes, but is not limited to: "Reasonable statewide service quality standards, including, but not limited to, standards regarding network technical quality, customer service, installation, repair, and billing."

would be disconnected in several days; and 2) how the Commission can say that the lack of advance warnings to ISPs is reasonable and therefore could not be a violation of PU Code §451 and §2896 (c). Raw Bandwidth's arguments are baseless.

Raw Bandwidth stresses the Decision's alleged failure to explain how the CISP settlement would be violated if SBC California gave an advance warning to the ISP. The Commission did in fact explain that the CISP settlement would be violated because it does not permit the authorization and notice procedure that Raw Bandwidth proposes. (ALJ Ruling of 12/22/2003, pp. 4-5.) The Decision affirmed the ruling by responding to Raw Bandwidth's Motion for Reconsideration of the ruling. The ultimate issue for the Commission's consideration was whether not giving advance notice to the ISP under these facts violates statute or Commission order. The Decision determined that not giving notice violates neither statute nor Commission order.

Not every issue that Raw Bandwidth thinks is important must be replicated in the findings and conclusions. PU Code §1705 provides in pertinent part that "the decision shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision." Only those material issues upon which the ultimate finding is based must be included in order to satisfy the requirements of §1705. Raw Bandwidth's reliance on *Southern Pacific Co. v. Pub. Util. Comm.* (1968) 68 Cal.2d 243, 244 is inapposite. In that case, only a single ultimate fact was set forth in the decision. There were no separately stated facts upon which the ultimate finding was based. This Decision, however, has Findings of Fact and Conclusions of Law that explain and support the order.

In sum, the ALJ, for good cause, granted in part the Defendants' Motion to Dismiss. Moreover, Raw Bandwidth's failure to request relief consistent with avoiding violation of the settlement agreement adopted in D.03-07-032 could not be countenanced. In addition, Raw Bandwidth is not precluded from negotiating

revisions to SBC ASI's General Terms and Conditions, including notice requirements. In fact, the Decision ordered the parties to negotiate the terms and conditions of service. The Decision correctly upheld the ALJ Ruling.

**B. SBC California's Differential Treatment of Customers Making 611 Calls Is Unreasonably Discriminatory.**

At issue is whether the Defendants unlawfully discriminate by providing customers of their affiliated ISP, SBCIS, who dial 611 for DSL repair services the option of connecting to SBCIS without having to hang up, but informing unaffiliated ISPs' customers they must hang up and contact their ISP.

Complainant asserts that SBC California's use of the 611 code to transfer calls to its own ISP, while refusing to do so for other ISPs, constitutes discrimination that is forbidden by PU Code §453 and 47 USC §202.<sup>3</sup> We agree that this differential treatment is unreasonably discriminatory in violation of §453, which is the relevant statute that needs to be addressed for our purposes.

In enacting §453(a), the Legislature created a broad ban on discriminatory conduct. (*Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 478. Customers who dial 611 for repair services should not be treated differently based on whether or not they subscribe to the local exchange carrier's ISP. SBC California is an ILEC that connects more than 10,000 calls each month from its 611 interactive voice response system to its ISP, SBCIS. It does not offer such a connection to any other ISP. It is unduly discriminatory for SBC California to allow 611 connections directly to its ISP for repair of underlying DSL Transport, but deny Raw Bandwidth the same 611 access for repair of the same

---

<sup>3</sup> Section 453 states in pertinent part as follows: "453. (a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage." Section 202 of 47 USC states in part that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in ...practices, classifications,...facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person,...to any undue or unreasonable prejudice or disadvantage."



underlying DSL Transport. This is contrary to the Commission's anti-discrimination policies and conflicts with our view of what constitutes basic service in California.

In *Re Universal Service and Compliance with the Mandates of AB 3643* (1996) 68 CPUC2d 524 (D.96-10-066), the Commission stated clearly that basic service includes "free access to customer service for information about ULTS, service activation, service termination, *service repair* and bill inquiries." (emphasis added; see *Re Universal Service*, Appendix B, *supra* at 673. Service repair means repair of any service offering. In this case, that includes DSL service repair.

We acknowledge that differential treatment is permissible under state law, so long as it is not unreasonable, and that not all inequitable treatment is entitled to redress under §453. Although Raw Bandwidth did not develop its argument as comprehensively as it should have despite the length of the rehearing application, we believe that the facts show that SBC California's procedure for handling 611 calls from unaffiliated ISPs is unreasonable. (*Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1180-81.) Therefore, SBC California must cease this discriminatory behavior. To remedy this, SBC must make the affiliation or non-affiliation of the ISP provider irrelevant in processing calls for 611 service repair.

**1. The FCC's Computer III Rules Are Not Determinative of Whether SBC California Is Obligated to Treat in the Same Manner Customers Who Dial 611 for Repair Service.**

We need not look to the FCC's Computer III rules in order to arrive at a finding of discrimination. The Computer III proceedings drew the line between basic and enhanced services under federal law. That is not the proper focus here. DSL Transport is a basic common carrier transmission service, not an enhanced service. (*WorldCom v. FCC*, 246 F.3d 690, 694 (D.C. Cir. 2001) (DSL-based advanced services qualify as telecommunications services (i.e., common carrier services) to which certain Title II provisions apply) (vacated on other grounds); *In*

*re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 19, 237, 19, 247, ¶ 21 (1999) (“bulk DSL services sold to [ISPs]...are telecommunications services, and as such, incumbent LECs must continue to comply with their basic common carrier obligations with respect to these services”); *In Re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24, 011, 24, 030, ¶¶ 36-37 (1998) (Bell companies are under a continuing obligation under Computer II to offer competing ISPs non-discriminatory access to the telecommunications services utilized by Bell’s information services). In the final analysis, the issue is whether access to 611 service repair is a basic service in California, where local exchange carriers must provide free access.

## 2. The FCC’s N11 Order

Raw Bandwidth relies on the FCC’s *N11 Order* for the proposition that SBC California may not use 611, or any N11 number, to support its DSL operation.<sup>4</sup> Complainant states that paragraphs 48 and 86 of the N11 Order require SBC California to transfer 611 callers reporting DSL trouble on DSL lines connected to independent ISPs to the independent ISP, “*if and only if* SBC California chooses to transfer such callers with SBC Internet service to SBCIS.” (Raw Bandwidth Rhg. App., p. 25, emphasis in original.) This goes to the heart of the matter, which is that SBC California, by its practices, must not convey an advantage to its affiliate that is not available to unaffiliated ISPs.

Paragraphs 46 and 48 of the N11 Order are consistent with this analysis. Paragraph 46 provides in pertinent part that “(1) all providers of telephone exchange service, should be enabled to use the 611 and 811 codes for repair services and business office uses as the incumbent LECs do now; and (2) by dialing these N11 numbers, customers should be able to reach their own carriers’ repair or business services. These conclusions are consistent with the Act’s

---

<sup>4</sup> First Report and Order, *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*,

requirement that all LECS permit competing providers of telephone exchange service and telephone toll service to have nondiscriminatory access to telephone numbers.” The principles discussed in the FCC’s order regarding access to N11 codes are equally applicable here.

### **C. Competition**

The Decision alluded to Raw Bandwidth’s concern that SBCIS could use the opportunity to transfer 611 calls to market its own DSL service. Concerning the issue of competition, we need only consider whether by requiring customers of unaffiliated ISPs to hang up and call their ISP, those customers are placed at a competitive disadvantage by being burdened by such a requirement when callers of affiliated ISPs are not. From a competition viewpoint, it is enough that customers of unaffiliated ISPs must take that extra step. Moreover, our focus is not with SBCIS, but rather with the local exchange carrier over whom we have plenary authority as granted by the Legislature and the California Constitution, art. XII.

We conclude that SBC California, by its practices, confers an undue competitive advantage to its affiliates if they can use abbreviated dialing (611) for repair of SBC’s DSL service, but competitors must use regular dialing to reach the unaffiliated DSL provider. Our regulatory authority over SBC California permits the Commission to require SBC California to provide free access to service repair to all users, without the encumbrance of having to take additional steps or dial additional digits, which is enjoyed by its own affiliated ISP. Accordingly, we modify the Decision consistent with this discussion.

### **D. Due Process**

Complainant alleges that the Decision violates its due process rights by dismissing counts in the First Amended Complaint for no lawful reason, particularly that Raw Bandwidth receive advance notice when customer voice line

---

12 FCC Rcd 5572 (1997) (“*N11 Order*”).

service is to be disconnected. The previous discussion on the dismissal of certain counts in the First Amended Complaint has already refuted this allegation. There was good cause to dismiss Raw Bandwidth's request for advance notice. We need not repeat that full explanation here. Raw Bandwidth's insistence on requesting a form of advance notice despite learning in the discovery process that its requested relief would violate the settlement agreement adopted in D.03-07-032 is of no avail. (See p. 5 of ALJ Ruling of 12/22/03.)

The Decision correctly states that the Scoping Memo narrowed the scope of the proceeding to three issues.<sup>5</sup> We agree with the Defendants that then, as now, Raw Bandwidth disregards the Scoping Memo process, which narrowed the issues in this proceeding. Raw Bandwidth did not protest the scope of the proceeding or move for reconsideration of the Scoping Memo. Raw Bandwidth was granted leave until September 22, 2003 to amend the complaint to request relief that would avoid privacy impacts inherent in having Defendants inform Complainant when underlying voice service is about to be disconnected. (Scoping Memo, p. 5.) Complainant did not comply. Raw Bandwidth cannot now complain of a denial of due process since the unconsidered claims were dismissed without prejudice. Raw Bandwidth was not denied due process.

#### **E. Oral Argument**

Complainant requests oral argument under Rule 86.3 of the Commission's Rules of Practice and Procedure.<sup>6</sup> Raw Bandwidth merely lists three "precedents" that it claims could adversely affect future cases. The first "precedent" is the finding that DSL Transport Service should not be considered a basic service under

---

<sup>5</sup> Rule 6.3 of the Commission's Rules of Practice and Procedure provides that the Scoping Memo shall, among other things, "finally determine the...issues to be addressed" in the proceeding. For the three issues identified in the Scoping Memo, see pp. 6-7 of *Scoping Memo and Ruling of Assigned Commissioner on Motion to Dismiss and Preliminary Matters*.

<sup>6</sup> Rule 86.3 provides in pertinent part that an application for rehearing will be considered for oral argument if the application demonstrates that oral argument will materially assist the Commission in resolving the application, and the application raises issues of major significance for the Commission.

Commission rules. We disposed of this "precedent" in our reconsideration of the discrimination issue. The relevant issue is that free access to 611 is a basic service under our universal service decision. The second "precedent" is the interpretation of the CISPA settlement in D.03-07-032. Under Commission rules, settlements are not precedential.<sup>7</sup> The Commission's interpretation of the settlement, by necessity, focuses on the facts of that settlement and must be consistent with the language of the settlement. The third "precedent" concerns the "finding" that SBCIS is not similarly situated with other ISPs who provide DSL service. No further explanation is given. The Decision does not contain any such finding.

The Commission is not persuaded by Complainant's request for oral argument. Raw Bandwidth merely made assertions without tying them to any facts in the case, or making any argument to persuade the Commission to grant oral argument. Raw Bandwidth neither demonstrated that oral argument will materially assist the Commission in resolving the rehearing application, nor how the application raises issues of major significance for the Commission. The request for oral argument is denied.

#### **IV. CONCLUSION**

Upon review of our holding in D.04-05-006, we have determined that we erred on the discrimination issue. Therefore, we grant limited rehearing to reverse D.04-05-006 on that issue and to require SBC California to cease its discriminatory behavior. We deny rehearing of the Decision, as modified, with respect to all other issues.

///

///

///

---

<sup>7</sup> Rule 51.8 of the Commission's Rules of Practice and Procedure provides in pertinent part that its adoption of a settlement does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

Therefore, **IT IS ORDERED** that:

1. Raw Bandwidth's application for rehearing of D.04-05-006 is granted on the issue of discrimination.
2. Within 60 days of the effective date of this order, SBC California and SBC ASI must cease telling customers of unaffiliated ISPs on 611 calls for digital subscriber line repair service to hang up and call their ISP, while connecting to repair service the customers of their affiliate, SBCIS.
3. On page 1, paragraph 1, line 2 under the Summary, delete the words "do not." Line 4, delete "or otherwise" and insert "and."
4. On page 3, 2 lines from the top, delete the sentence beginning with "Raw Bandwidth , which is an unaffiliated ISP" to the end of the paragraph and insert the following:

Raw Bandwith, an unaffiliated ISP, sees no reason why SBC California cannot automatically connect Raw Bandwidth's subscribers to its service department when they call 611 with a DSL question or difficulty. We hold that the subscribers of unaffiliated ISPs should not be burdened with the additional step of hanging up and calling their service department, while subscribers of SBC California and its affiliates are not so burdened when they call service repair.

5. On page 6, the first full paragraph that begins with “There also is no statute that bars disconnection of non-basic services” should be deleted.
6. On page 10, change heading A to read:  
  
SBC California's Differential Treatment of Customers Making 611 Calls Is Discriminatory and Contrary to California's Universal Service Requirements.
7. On page 10, first full paragraph, delete the sentence that begins with “However, a significant number of subscribers” to the end of the paragraph and insert the following:  
  
We note that a significant of subscribers call 611 for repair services, and a significant number are connected to SBCIS. We therefore hold that this differential treatment is unlawful because the fact that Raw Bandwidth’s DSL service subscriber must hang up and call Raw Bandwidth’s service department disadvantages unaffiliated ISPs.
8. On page 10, paragraph 2, delete the sentence that begins “We determine that no other federal requirement” and insert the following:  
  
We focus on what this Commission may require of SBC California. Our universal service decision requires local exchange carriers to provide free access to service repair because it is a basic service. (See D.96-10-066, Appendix B, page 5)
9. On page 10, the last paragraph, delete the first two sentences that begin with “The connection of 611 repair calls” and ends with “those calls concerning its own ISP.”

10. On page 12, delete the paragraph beginning with "Defendants contend" and the paragraph that follows.

11. On page 13, change heading "B" to read as follows:

The Transfer of 611 Calls Raises Competitive Concerns

12. On page 13, delete second full paragraph that begins with "The inadvertent transfer" and the third paragraph that continues on page 14, and insert the following:

Concerning the issue of competition, we need only consider whether SBC California confers an unlawful competitive advantage on its affiliates by requiring competitors to have their customers burdened by having to hang up and call their ISP, while callers of its affiliated ISP do not. It is enough that customers of unaffiliated ISPs must take that extra step. Therefore, we conclude that SBC California confers an undue competitive advantage to its affiliates if their customers can use abbreviated dialing (611) to also be connected for repair of SBC's DSL service, but others must use regular dialing to reach the unaffiliated DSL provider.

13. Conclusion of Law No. 2, which reads, "The FCC's Computer III rules govern SBC California's obligations regarding enhanced services" should be deleted.
14. Conclusion of Law No. 3, which reads "The FCC's Computer III rules do not prohibit the differential treatment of subscribers described in Findings of Fact 3 and 4" should be deleted.
15. Conclusion of Law No. 4, which reads "Pub. Util. Code 453 does not prohibit the differential treatment described in Findings of Fact 3 and 4" should be deleted, and insert the following:

Public Utilities Code 453 prohibits SBC California's practice of requiring on 611 calls for digital subscriber line repair service, the subscribers of unaffiliated ISPs to hang up and



call their service department while subscribers of its affiliates are not required to take that extra step.

16. Conclusion of Law No. 6, which reads “The inadvertent transfer of unaffiliated ISPs’ subscribers with DSL repair concerns to SBCIS does not raise competitive concerns. Defendants must address subscribers’ inquiries before marketing SBCIS DSL service” should be deleted. Add the following as Conclusion of Law No. 6:

SBC California, by its practices, confers an unlawful competitive advantage on its affiliates if its customers can use abbreviated dialing (611) for repair of SBC’s DSL service, but others must use regular dialing to reach the unaffiliated DSL provider.

17. This proceeding is closed.

This order is effective today.

Dated January 13, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners